

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2061 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KANIYALAL LAXMANDAS DHOBI

Versus

STATE OF GUJARAT

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Appearance:

Mrs Subhadra G.Patel, Advocate for the petitioner.

Mr.U.R.Bhatt, AGP for the respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 22/07/96

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the detenu Kanaiyalal Laxmandas Dhobi has challenged the legality and validity of the order of detention dated 3-3-96 passed by the Commissioner of Police, Vadodara City, in exercise of his powers under sub-section (1) of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on three pending trial cases registered against the detenu . He has also placed reliance on the statements of three witnesses for the alleged incidents of 28-12-95, 24-1-96 and 5-2-96. Considering this material, the detaining authority has recorded a finding that the detenu is a "bootlegger" within the meaning of section 2 (b) of the said Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

Since this petition can be disposed of only on the first contention raised by Mrs. Patel, learned Advocate for the petitioner, it is not necessary for this Court to refer to and deal with the other contentions raised by her. Mrs. Patel has contended that the continued detention of the detenu is vitiated on account of the fact that there is an unexplained delay of about five months in passing the order of detention.

I find considerable substance in the submission of Mrs. Patel. The Supreme Court in Pradeep Nilkanth Paturkar vs S.Ramamurthi AIR 1994 SC 656 quashed and set aside the order of detention passed after 5 months and 8 days from the registration of the last case and more than 4 months from the submission of proposal. It is an undisputed fact that C.R.No.221/95, C.R.No.450/95 and C.R.No. 558/95 have been registered against the detenu on 23-5-95, 5-9-95 and 17-10-95, respectively. It is also not in dispute that the detenu was released on bail on 18-10-1995 with respect to the last offence registered against him . Four months after the detenu was released on bail, i.e. on 16th, 18th and 19th February, 1996 the statements of the witnesses were recorded, whose identity is not disclosed to the detenu by the detaining authority by invoking the provisions of section 9 (2) of the said Act. Thus, there is a delay of about 4 months and 14 days in passing the order of detention from the date of the last offence registered against the detenu . There is also a delay of four months in recording the statements of the witnesses from the date of the release of the detenu on bail. The respondents have neither placed any material nor filed any affidavit explaining this delay in passing the order of detention. Therefore, in view of the decision in P.N.Paturkar's case ( supra) the continued detention of the detenu is vitiated and the petition is required to be allowed on this ground only .

In the result, this petition is allowed. The order of detention dated 3-3-1996 is quashed and set aside. The detenu Kanaiyalal Laxmandas Dhobi is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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